



Docket No. 49927 (71526)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANT: Seya, et al.

SERIAL NO.: 09/601,371

EXAMINER: P. M. Mertz

FILED: December 5, 2000

GROUP: 1646

FOR: CYTOKINE INDUCERS COMPRISING M161Ag

**Mail Stop: Non-Fee Amendment**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

**RESPONSE TO RESTRICTION REQUIREMENT**

Applicants submit herewith the following response to the Office Communication dated November 26, 2003, which Office Communication included a Restriction Requirement.

As an initial matter, Applicants respectfully submit that search and examination of each of the five (5) Groups set forth in the Restriction Requirement would not be unduly burdensome. In particular, it is noted that each of the five Groups corresponds to the *exact same class/subclass (class 514/subclass 2)*.

Alternately, Applicants respectfully request that the below election be treated as a species election for purposes of conducting an initial search rather than as a restriction of invention. In that way, once the initial species is searched, and assuming no art is found which can be applied to the subject matter of that species, the search would then be broadened to include the next species. Again, if no art is found which can be applied to the subject matter of that species, the search would then be broadened to the next species with an eye toward the genus of claim 15.

In any event, should the Restriction Requirement be maintained, Applicants further respectfully request that rejoinder of some, if not all, of the remaining Groups be considered by the Examiner following the search.

Nonetheless, in order to be fully responsive to the Office Communication, Applicants elect the invention of Group II: Claims 15-17, drawn to a method of treatment of diseases caused by tumor necrosis factor- $\alpha$  (TNF- $\alpha$ ) deficiency by administering an M161Ag protein having the amino acid sequence set forth in SEQ ID NO:1, as that Group is further defined in the Office Communication.

The election of the noted Group is being made solely to comply with the Restriction Requirement set forth in the Office Communication. The right to file one or more divisional applications on non-elected subject matter is reserved.

Favorable consideration and early allowance of the application are earnestly solicited.

Respectfully submitted,

  
Christine C. O'Day (Reg. 38,256)  
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P.O. Box 9169  
Boston, MA 02209  
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1646

Practitioner's Docket No. 49927 (71526)**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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**AMENDMENT TRANSMITTAL**

1. Transmitted herewith is an amendment for this application.

**STATUS**

2. Applicant is  
☐ a small entity.  
☒ other than a small entity.

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**CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. 1.8(a))**

I hereby certify that, on the date shown below, this correspondence is being:

**MAILING**

- ☒ deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

**FACSIMILE**

- ☐ transmitted by facsimile to the Patent and Trademark Office.

Signature

Date: 12/22/03Lee Dunkle

(type or print name of person certifying)

## EXTENSION OF TERM

NOTE: "Extension of Time in Patent Cases (Supplement Amendments) — If a timely and complete response has been filed after a Non-Final Office Action, an extension of time is not required to permit filing and/or entry of an additional amendment after expiration of the shortened statutory period.

If a timely response has been filed after a Final Office Action, an extension of time is required to permit filing and/or entry of a Notice of Appeal or filing and/or entry of an additional amendment after expiration of the shortened statutory period unless the timely-filed response placed the application in condition for allowance. Of course, if a Notice of Appeal has been filed within the shortened statutory period, the period has ceased to run." Notice of December 10, 1985 (1061 O.G. 34-35).

NOTE: See 37 C.F.R. 1.645 for extensions of time in interference proceedings, and 37 C.F.R. 1.550(c) for extensions of time in reexamination proceedings.

3. The proceedings herein are for a patent application and the provisions of 37 C.F.R. 1.136 apply.

(complete (a) or (b), as applicable)

(a) ☐ Applicant petitions for an extension of time under 37 C.F.R. 1.136 (fees: 37 C.F.R. 1.17(a)(1)-(4)) for the total number of months checked below:

	Extension (months)	Fee for other than small entity	Fee for small entity
<input type="checkbox"/>	one month	\$110.00	\$55.00
<input type="checkbox"/>	two months	\$410.00	\$205.00
<input type="checkbox"/>	three months	\$930.00	\$465.00
<input type="checkbox"/>	four months	\$1,450.00	\$725.00
<input type="checkbox"/>	five months	\$1,970.00	\$985.00

Fee: \$ \_\_\_\_\_

If an additional extension of time is required, please consider this a petition therefor.

(check and complete the next item, if applicable)

☐ An extension for \_\_\_\_\_ months has already been secured. The fee paid therefor of \$ \_\_\_\_\_ is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request \$ \_\_\_\_\_

OR

(b) ☒ Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition for extension of time.

## FEE FOR CLAIMS

4. The fee for claims (37 C.F.R. 1.16(b)-(d)) has been calculated as shown below:

(Col. 1) (Col. 2) (Col. 3) SMALL ENTITY					OTHER THAN A SMALL ENTITY			
Claims Remaining After Amendment		Highest No. Previously Paid For	Present Extra	Rate	Addit. Fee	OR	Rate	Addit. Fee
Total	* Minus	**	=	x \$9 =	\$0		x \$18 =	\$
Indep.	* Minus	***	=	x \$42 =	\$0		x \$84 =	\$0
[ ] First Presentation of Multiple Dependent Claim				+ \$140 =			+ \$280 =	
					Total Addit. Fee	\$	OR	Total Addit. Fee
							\$	\$

\* If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3,

\*\* If the "Highest No. Previously Paid For" IN THIS SPACE is less than 20, enter "20".

\*\*\* If the "Highest No. Previously Paid For" IN THIS SPACE is less than 3, enter "3".

The "Highest No. Previously Paid For" (Total or Indep.) is the highest number found in the appropriate box in Col. 1 of a prior amendment or the number of claims originally filed.

**WARNING:** "After final rejection or action (§ 1.113) amendments may be made canceling claims or complying with any requirement of form which has been made." 37 C.F.R. 1.116(a) (emphasis added).

(complete (c) or (d), as applicable)

(c) [X] No additional fee for claims is required.

**OR**

(d) [ ] Total additional fee for claims required \$ \_\_\_\_.

## FEE PAYMENT

5. [ ] Attached is a check in the sum of \$ \_\_\_\_.

[ ] Charge Account No. \_\_\_\_\_ the sum of \$ \_\_\_\_.

A duplicate of this transmittal is attached.

## FEE DEFICIENCY

**NOTE:** If there is a fee deficiency and there is no authorization to charge an account, additional fees are necessary to cover the additional time consumed in making up the original deficiency. If the maximum, six-month period has expired before the deficiency is noted and corrected, the application is held abandoned. In those instances where authorization to charge is included, processing delays are encountered in returning the papers to the PTO Finance Branch in order to apply these charges prior to action on the cases. Authorization to charge the deposit account for any fee deficiency should be checked. See the Notice of April 7, 1986, (1065 O.G. 31-33).

6. [X] If any additional extension and/or fee is required, charge Account No. 04-1105.

AND/OR

[X] If any additional fee for claims is required, charge Account No. 04-1105

Christine C. O'Day

SIGNATURE OF PRACTITIONER

Reg. No. 38,256

Christine C. O'Day

(type or print name of practitioner)

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